

PATENT COOPERATION TREATY

PCT/EP2003/006888

Patente, Marken u. Lizenzen From the INTERNATIONAL BUREAU

PCT

01. März 2005

NOTIFICATION OF TRANSMITTAL
OF COPIES OF TRANSLATION
OF THE INTERNATIONAL PRELIMINARY
EXAMINATION REPORT

(PCT Rule 72.2)

To:

BASF AKTIENGESELLSCHAFT
67056 Ludwigshafen
ALLEMAGNE1. AST
2. REF

EL: Phase beendet 20.12.04

Date of mailing (day/month/year)

24 February 2005 (24.02.2005)

Applicant's or agent's file reference
53703 WO/NI

IMPORTANT NOTIFICATION

International application No.

PCT/EP2003/006888

International filing date (day/month/year)

30 June 2003 (30.06.2003)

Applicant

BASF AKTIENGESELLSCHAFT et al

1. Transmittal of the translation to the applicant.

The International Bureau transmits herewith a copy of the English translation made by the International Bureau of the international preliminary examination report established by the International Preliminary Examining Authority.

2. Transmittal of the copy of the translation to the elected Offices.

The International Bureau notifies the applicant that copies of that translation have been transmitted to the following elected Offices requiring such translation:

AZ, CA, CH, CN, CO, GH, KG, KP, KR, MK, MZ, RU, TM

The following elected Offices, having waived the requirement for such a transmittal at this time, will receive copies of that translation from the International Bureau only upon their request:

AE, AG, AL, AM, AP, AT, AU, BA, BB, BG, BR, BY, BZ, CR, CU, CZ, DE, DK, DM, DZ, EA, EC, EE, EP, ES, FI, GB, GD, GE, GM, HR, HU, ID, IL, IN, IS, JP, KE, KZ, LC, LK, LR, LS, LT, LU, LV, MA, MD, MG, MN, MW, MX, NO, NZ, OA, OM, PH, PL, PT, RO, SD, SE, SG, SK, SL, TJ, TN, TR, TT, TZ, UA, UG, US, UZ, VC, VN, YU, ZA, ZM, ZW

3. Reminder regarding translation into (one of) the official language(s) of the elected Office(s).

The applicant is reminded that, where a translation of the international application must be furnished to an elected Office, that translation must contain a translation of any annexes to the international preliminary examination report.

It is the applicant's responsibility to prepare and furnish such translation directly to each elected Office concerned (Rule 74.1). See Volume II of the PCT Applicant's Guide for further details.

The International Bureau of WIPO
34, chemin des Colombettes
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From the INTERNATIONAL BUREAU

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NOTIFICATION OF TRANSMITTAL
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To:

BASF AKTIENGESELLSCHAFT
67056 Ludwigshafen
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Applicant BASF AKTIENGESELLSCHAFT et al	

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34, chemin des Colombettes
1211 Geneva 20, Switzerland

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Translation

PATENT COOPERATION TREATY

PCT/EP2003/006888



PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference 53703 WO/NI	FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)	
International application No. PCT/EP2003/006888	International filing date (day/month/year) 30 June 2003 (30.06.2003)	Priority date (day/month/year) 10 July 2002 (10.07.2002)
International Patent Classification (IPC) or national classification and IPC A01N 43/32, A01N 43/32		
Applicant BASF AKTIENGESELLSCHAFT		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of <u>14</u> sheets, including this cover sheet. <input checked="" type="checkbox"/> This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT). These annexes consist of a total of <u>2</u> sheets.
3. This report contains indications relating to the following items: I <input checked="" type="checkbox"/> Basis of the report II <input type="checkbox"/> Priority III <input type="checkbox"/> Non-establishment of opinion with regard to novelty, inventive step and industrial applicability IV <input checked="" type="checkbox"/> Lack of unity of invention V <input checked="" type="checkbox"/> Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement VI <input type="checkbox"/> Certain documents cited VII <input type="checkbox"/> Certain defects in the international application VIII <input type="checkbox"/> Certain observations on the international application

Date of submission of the demand 19 December 2003 (19.12.2003)	Date of completion of this report 08 December 2004 (08.12.2004)
Name and mailing address of the IPEA/EP	Authorized officer
Facsimile No.	Telephone No.

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.

PCT/EP2003/006888

I. Basis of the report

1. With regard to the elements of the international application:*

- ☐ the international application as originally filed
- ☒ the description:
 pages 1-12, as originally filed
 pages _____, filed with the demand
 pages _____, filed with the letter of _____
- ☒ the claims:
 pages _____, as originally filed
 pages _____, as amended (together with any statement under Article 19
 pages _____, filed with the demand
 pages 1-9, filed with the letter of 14 October 2004 (14.10.2004)
- ☐ the drawings:
 pages _____, as originally filed
 pages _____, filed with the demand
 pages _____, filed with the letter of _____
- ☐ the sequence listing part of the description:
 pages _____, as originally filed
 pages _____, filed with the demand
 pages _____, filed with the letter of _____

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item. These elements were available or furnished to this Authority in the following language _____ which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages _____
- ☐ the claims, Nos. _____
- ☐ the drawings, sheets/fig _____

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).**

* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rule 70.16 and 70.17).

** Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.

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IV. Lack of unity of invention

1. In response to the invitation to restrict or pay additional fees the applicant has:

- ☒ restricted the claims.
☒ paid additional fees.
☐ paid additional fees under protest.
☐ neither restricted nor paid additional fees.

2. ☐ This Authority found that the requirement of unity of invention is not complied with and chose, according to Rule 68.1, not to invite the applicant to restrict or pay additional fees.

3. This Authority considers that the requirement of unity of invention in accordance with Rules 13.1, 13.2 and 13.3 is

- ☐ complied with.
☒ not complied with for the following reasons:

See the supplemental box

4. Consequently, the following parts of the international application were the subject of international preliminary examination in establishing this report:

- ☐ all parts.
☒ the parts relating to claims Nos. 1-9 filed with the telefax of 14 October 2004 (14.10.2004)

Supplemental Box

(To be used when the space in any of the preceding boxes is not sufficient)

Continuation of: IV.3.

Lack of Unity of Invention

The International Preliminary Examining Authority agrees with the objection raised by the International Searching Authority with regard to a lack of unity of invention (PCT Rule 13.1) for the following reasons:

1) Closest prior art:

Document DE-A-3609645 (D1)

This document describes fungicidal mixtures of triazole fungicides (myclobutanil, DPX-6573, penconazole) with a number of other fungicides. These combinations of agents demonstrate synergistic effects and broad effectiveness against a multitude of phytopathogenic fungi. Dithianon is one of the combination partners mentioned as particularly preferred.

2) The problem addressed by the solutions according to the present application is that of providing further dithianon-containing fungicidal mixtures that make it possible to reduce the application rates and broaden the spectrum of activity.

3) The solution, in the most broadly worded definition, is represented by compositions containing dithianon (I) and azole derivatives from the group of triazole fungicides (II-1) to (II-7) (see the description and original version of claim 1).

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

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Supplemental Box

(To be used when the space in any of the preceding boxes is not sufficient)

Continuation of: IV.3.

- 4) The technical features of the original version of claim 1 thus represent *prima facie* a plurality of different inventions.
- 5) The common contribution over the prior art made by these different inventions is assumed to be the conclusion that combinations of dithianon and triazole fungicides demonstrate synergistic effects.
- 6) In the context of this presumed invention as it is presented in the present application, said contribution provides the common technical feature that can *a priori* unify the plurality of alternative inventions (special technical feature).
- 7) Since solutions with technical features similar (see document D1) to those described in the present application (see the original version of claim 1) are already known, the technical features proposed in the present application cannot be accepted as the "special technical feature" that determines the contribution of every claimed invention as a whole to the prior art. Since it is not possible to discern any other technical features that could satisfy these requirements in view of the prior art, there is no single inventive concept underlying the plurality of different inventions in the present application (see PCT Rule 13.2).
- 8) Consequently, there is a lack of unity of invention (*a posteriori*).

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

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Supplemental Box

(To be used when the space in any of the preceding boxes is not sufficient)

Continuation of: IV.3.

The International Searching Authority is of the opinion that the following individual inventions or groups of inventions, as described in the original version of the description and claims, are not so linked as to form a single general inventive idea:

1. Fungicidal mixture containing A) the compound of formula I and compound II-1 in synergistically effective amounts, as well as mixtures, agents, method and uses related to said mixture.
2. Fungicidal mixture containing A) the compound of formula I and compound II-2 in synergistically effective amounts, as well as mixtures, agents, method and uses related to said mixture.
3. Fungicidal mixture containing A) the compound of formula I and compound II-3 in synergistically effective amounts, as well as mixtures, agents, method and uses related to said mixture.
4. Fungicidal mixture containing A) the compound of formula I and compound II-4 in synergistically effective amounts, as well as mixtures, agents, method and uses related to said mixture.
5. Fungicidal mixture containing A) the compound of formula I and compound II-5 in synergistically effective amounts, as well as mixtures, agents, method and uses related to said mixture.

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

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Supplemental Box

(To be used when the space in any of the preceding boxes is not sufficient)

Continuation of: IV, 3.

6. Fungicidal mixture containing A) the compound of formula I and compound II-6 in synergistically effective amounts, as well as mixtures, agents, method and uses related to said mixture.

7. Fungicidal mixture containing A) the compound of formula I and compound II-7 in synergistically effective amounts, as well as mixtures, agents, method and uses related to said mixture.

The international search was conducted for the (above-mentioned) inventions 1, 2, 3, 4, 6 and 7.

The applicant responded to an invitation to restrict the claims and/or pay additional fees pursuant to PCT Rule 68.2 by paying additional examination fees and restricting the claims.

The present written report thus extends to the following inventions as described in the amended set of claims, which was submitted by fax on 14 October 2004:

A) Fungicidal mixture containing A) the compound of formula I and compound II-2 in synergistically effective amounts, as well as mixtures, agents, method and uses related to said mixture, as described in amended claims 2-9.

B) Fungicidal mixture containing A) the compound of formula I and compound II-3 in synergistically effective amounts, as well as mixtures, agents,

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

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Supplemental Box

(To be used when the space in any of the preceding boxes is not sufficient)

Continuation of: IV.3.

method and uses related to said mixture, as described in amended claims 2-9.

C) Fungicidal mixture containing A) the compound of formula I and compound II-4 in synergistically effective amounts, as well as mixtures, agents, method and uses related to said mixture, as described in amended claims 2-9.

D) Fungicidal mixture containing A) the compound of formula I and compound II-7 in synergistically effective amounts, as well as mixtures, agents, method and uses related to said mixture, as described in amended claims 2-9.

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V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims	1 - 9	YES
	Claims		NO
Inventive step (IS)	Claims	1 - 9	YES
	Claims		NO
Industrial applicability (IA)	Claims	1 - 9	YES
	Claims		NO

2. Citations and explanations

A.1. Invention A

Fungicidal mixture containing A) the compound of formula I and compound II-2 in synergistically effective amounts, as well as mixtures, agents, methods and uses related to said mixture, as described in amended claims 2-9.

Reference is made to the following documents:

D1: DE 36 09 645 A (HOECHST AG) 24 September 1987
(1987-09-24)

D2: EP-A-0 556 157 (CIBA GEIGY AG) 18 August 1993
(1993-08-18)

D3: DATABASE CA [Online] CHEMICAL ABSTRACTS SERVICE,
COLUMBUS, OHIO, US; H. FLEMMING ET AL.: 'Dithianon; an
organic compound with wide fungicidal efficiency',
retrieved from STN-INTERNATIONAL, Database accession
no. 60:5851 CA XP002259625 & ZEITSCHRIFT FÜR PFLANZEN-
KRANKHEITEN UND PFLANZENSCHUTZ, Vol. 70, No. 1, 1963,
pages 4-11

D4: EP-A-0 196 038 (BASF AG) 1 October 1986 (1986-10-01)

A.2. Certain defects in the international application

Contrary to PCT Rule 5.1(a)(ii), the description does not cite documents D1 to D4 or indicate the relevant prior art disclosed therein.

A.3. Novelty

Inasmuch as invention A is concerned, the subject matter of claims 1-9 is novel (PCT Article 33(2)).

A.4. Inventive Step

Inasmuch as invention A is concerned, the subject matter of claims 1-9 involves an inventive step (PCT Article 33(3)).

Document D1, which is considered the closest prior art, discloses synergistic mixtures of dithianon and the triazole fungicides myclobutanil, DPX-6573, S-3308 and penconazole. The subject matter of claims 1-9 differs from this disclosure in that it relates to synergistic mixtures of dithianon and epoxyconazole. The problem to be solved by the present invention can thus be seen as that of identifying another combination partner from the class of triazole fungicides that demonstrates a synergistic effect with dithianon. None of documents D1 to D4 contains any indication of selecting epoxyconazole from the large class of triazole fungicides as a promising partner for dithianon.

A.5. Industrial Applicability

Inasmuch as invention A is concerned, the subject matter of claims 1-9 is appears to be industrially applicable (PCT Article 33(4)).

B.1. Invention B

Fungicidal mixture containing A) the compound of formula I and compound II-3 in synergistically effective amounts, as well as mixtures, agents, methods and uses related to said mixture, as described in amended claims 2-9.

Reference is made to the following documents:

D1: DE 36 09 645 A (HOECHST AG) 24 September 1987
(1987-09-24)

D2: DE 43 18 372 A (SCHERING AG) 16 December 1993
(1993-12-16)

D3: DATABASE CA [Online] CHEMICAL ABSTRACTS SERVICE, COLUMBUS, OHIO, US; H. FLEMMING ET AL.: 'Dithianon; an organic compound with wide fungicidal efficiency', retrieved from STN-INTERNATIONAL, Database accession no. 60:5851 CA XP002259625 & ZEITSCHRIFT FÜR PFLANZENKRANKHEITEN UND PFLANZENSCHUTZ, Vol. 70, No. 1, 1963, pages 4-11

D4: DATABASE CA [Online] CHEMICAL ABSTRACTS SERVICE, COLUMBUS, OHIO, US; P.E. RUSSEL ET AL.: 'Fluquinconazole, a novel broad-spectrum fungicide for foliar application', retrieved from STN-INTERNATIONAL, Database accession no. 118:185737 CA XP002274263 & BROUGHTON DROP PROTECTION CONFERENCE - PESTS AND DISEASES, No. 1, 1992, pages 411-418

B.2. Certain defects in the international application

Contrary to PCT Rule 5.1(a)(ii), the description does not cite documents D1 to D4 or indicate the relevant prior art disclosed therein.

B.3. Novelty

Inasmuch as invention B is concerned, the subject matter of claims 1-9 is novel (PCT Article 33(2)).

B.4. Inventive Step

Inasmuch as invention B is concerned, the subject matter of claims 1-9 involves an inventive step (PCT Article 33(3)).

Document D1, which is considered the closest prior art, discloses synergistic mixtures of dithianon and the triazole fungicides myclobutanil, DPX-6573, S-3308 and penconazole. The subject matter of claims 1-9 differs from this disclosure in that it relates to synergistic mixtures of dithianon and fluquinconazole. The problem to be solved by the present invention can thus be seen as that of identifying another combination partner from the class of triazole fungicides that demonstrates a synergistic effect with dithianon. None of documents D1 to D4 contains any indication of selecting fluquinconazole from the large class of triazole fungicides as a promising partner for dithianon.

B.5. Industrial Applicability

Inasmuch as invention B is concerned, the subject matter of claims 1-9 is appears to be industrially applicable (PCT Article 33(4)).

C.1. Invention C

Fungicidal mixture containing A) the compound of formula I and compound II-4 in synergistically effective amounts, as well as mixtures, agents, methods and uses related to said mixture, as described in amended claims 2-9.

Reference is made to the following documents:

D1: DE 36 09 645 A (HOECHST AG) 24 September 1987

(1987-09-24)

D2: DE 43 18 372 A (SCHERING AG) 16 December 1993

(1993-12-16)

D3: DATABASE CA [Online] CHEMICAL ABSTRACTS SERVICE, COLUMBUS, OHIO, US; H. FLEMMING ET AL.: 'Dithianon; an organic compound with wide fungicidal efficiency', retrieved from STN-INTERNATIONAL, Database accession no. 60:5851 CA XP002259625 & ZEITSCHRIFT FÜR PFLANZEN-KRANKHEITEN UND PFLANZENSCHUTZ, Vol. 70, No. 1, 1963, pages 4-11

D4: EP-A-0 040 345 (BAYER AG) 25 November 1981

(1981-11-25), mentioned in the application

C.2. Certain defects in the international application

Contrary to PCT Rule 5.1(a)(ii), the description does not cite documents D1 to D4 or indicate the relevant prior art disclosed therein.

C.3. Novelty

Inasmuch as invention C is concerned, the subject matter of claims 1-9 is novel (PCT Article 33(2)).

C.4. Inventive Step

Inasmuch as invention C is concerned, the subject matter of claims 1-9 involves an inventive step (PCT Article 33(3)).

Document D1, which is considered the closest prior art, discloses synergistic mixtures of dithianon and the

triazole fungicides myclobutanil, DPX-6573, S-3308 and penconazole. The subject matter of claims 1-9 differs from this disclosure in that it relates to synergistic mixtures of dithianon and tebuconazole. The problem to be solved by the present invention can thus be seen as that of identifying another combination partner from the class of triazole fungicides that demonstrates a synergistic effect with dithianon. None of documents D1 to D4 contains any indication of selecting tebuconazole from the large class of triazole fungicides as a promising partner for dithianon.

C.5. Industrial Applicability

Inasmuch as invention C is concerned, the subject matter of claims 1-9 is appears to be industrially applicable (PCT Article 33(4)).

D.1. Invention D

Fungicidal mixture containing A) the compound of formula I and compound II-7 in synergistically effective amounts, as well as mixtures, agents, methods and uses related to said mixture, as described in amended claims 2-9.

Reference is made to the following documents:

D1: DE 36 09 645 A (HOECHST AG) 24 September 1987
(1987-09-24)

D2: WO 98 47367 A (STENZEL KLAUS; BAYER AG (DE); DUTZMANN STEFAN (DE); JAUTELAT MANFRED (DE)) 29 October 1998
(1998-10-29)

D3: DATABASE CA [Online] CHEMICAL ABSTRACTS SERVICE, COLUMBUS, OHIO, US; H. FLEMMING ET AL.: 'Dithianon; an organic compound with wide fungicidal efficiency',

retrieved from STN-INTERNATIONAL, Database accession no. 60:5851 CA XP002259625 & ZEITSCHRIFT FÜR PFLANZEN-KRANKHEITEN UND PFLANZENSCHUTZ, Vol. 70, No. 1, 1963, pages 4-11

D4: WO 96 16048 A (BAYER AG; JAUTELAT MANFRED (DE); TIEMANN RALF (DE); DUTZMANN STEFAN (DE)) 30 May 1996 (1996-05-30), mentioned in the application

D.2. Certain defects in the international application

Formula II-7 in the description and in the claims does not appear to be correct. Prothioconazole is 2-[2-(1-chlorocyclopropyl)-3-(2-chlorophenyl)-2-hydroxypropyl]-2,4-dihydro-3H-1,2,4-triazole-3-thione and not the 4-chlorophenyl derivative (see the present application, description, page 2, line 36; see document D4).

Contrary to PCT Rule 5.1(a)(ii), the description does not cite documents D1 to D4 or indicate the relevant prior art disclosed therein.

D.3. Novelty

Inasmuch as invention D is concerned, the subject matter of claims 1-9 is novel (PCT Article 33(2)).

D.4. Inventive Step

Inasmuch as invention D is concerned, the subject matter of claims 1-9 involves an inventive step (PCT Article 33(3)).

Document D1, which is considered the closest prior art, discloses synergistic mixtures of dithianon and the triazole fungicides myclobutanil, DPX-6573, S-3308 and penconazole. The subject matter of claims 1-9 differs from

this disclosure in that it relates to synergistic mixtures of dithianon and prothioconazole. The problem to be solved by the present invention can thus be seen as that of identifying another combination partner from the class of triazole fungicides that demonstrates a synergistic effect with dithianon. None of documents D1 to D4 contains any indication of selecting prothioconazole from the large class of triazole fungicides as a promising partner for dithianon.

D.5. Industrial Applicability

Inasmuch as invention D is concerned, the subject matter of claims 1-9 is appears to be industrially applicable (PCT Article 33(4)).